**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 5916 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE P.B.MAJMUDAR**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**CHIMANLAL BABUBHAI JAISWAL**
**Versus**
**STATE OF GUJARAT THR' SECRETARY AND OTHERS**

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**Appearance :**
MR SM GOHIL for Petitioner.
RULE SERVED BY DS for Respondent(s) : 1 - 3.
MR M.IQBAL SHAIKH for Respondent No. 2.
MR ND GOHIL, AGP for Respondent No. 1, 3, 4.

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**CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR**

**Date : 14/07/2006**

**ORAL JUDGMENT**

By filing this petition, the petitioner – detenu has challenged his detention order dated 18th March, 2006, by which he is detained under the provisions of Prevention of Black Marketing and Maintenance of

Supplies of Essential Commodities Act, 1980. It is alleged that the petitioner is indulging in black marketing activities and he has tried to disturb the free distribution of blue-kerosene, which is an essential article. After considering the material on record, the detaining authority has passed the order of detention against the petitioner under the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

Mr.S.M.Gohil, learned advocate for the petitioner submitted that in paragraph-2 of the grounds of detention, there is a reference to five criminal cases lodged against the petitioner for coming to the conclusion that in the past also, the petitioner had indulged into such activities, however, copy of the same is not made available to the petitioner. He further submitted that by not supplying aforesaid documents, the petitioner is denied his right to make effective representation against his detention order and, therefore, the order of detention is required to be quashed on this grounds. In support of his contention, learned advocate for the petitioner has relied upon the decision of the Supreme Court in **Sunil Dutt Vs. Union of India and others**, reported in **AIR 1982 SUPREME COURT 53**, wherein it is held as under in paragraphs 5 and 6 :

> "5. It was not disputed before me that along with the grounds of detention which were served on the detenu on July 11, 1980, none of the documents, either relied upon or referred to in the grounds, were served upon him. Admittedly, the service of such documents was delayed up to July 19, 1980. It is obvious that those very documents must have formed the basis of making out the grounds of detention and ex hypothesi these documents were in existence and available for being served upon the detenu along with grounds of detention. Further, documents referred to in the grounds were served as late as on August 4, 1980, with the result that the detenu was required to send his incomplete

representation which he did on July 26, 1980. Clearly the safeguard guaranteed under Art. 22 (5) of the Constitution was violated. In Kamla Kanyalal Khushalani v. State of Maharashtra, (1981) 1 SCC 748: (AIR 1981 SC 814) this Court has observed as follows:

> "It is of the utmost importance that all the necessary safeguards laid down by the Constitution under Article 21 or Article .22 (5) should be complied with fully and strictly and any departure from any of the safeguards would void the order of detention. The law of preventive detention has now to satisfy a two-fold test : (I) that the protection and the guarantee afforded under Art. 22 (5) is complied with, and (2) that the procedure is just and reasonable. If a procedure under Article 21 has to be reasonable, fair and just, then the words 'effective representation' appearing in Article 22 (5) must be construed so as to provide a real and meaningful opportunity to the detenu to explain his case to the detaining authority in his representation. In this view of the matter, unless the materials and documents relied on in the order of detention are supplied to the detenu along with the grounds, the supply of grounds simpliciter would give him not a real but merely an illusory opportunity, to make a representation to the detaining authority."

6. It is true that under sub-sec. (3) of S. 3 of the COFEPOSA Act it is provided that for the purpose of Art. 22 (5) of the Constitution, the communication to a person detained 'in pursuance of the detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but ordinarily not later than five days, and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention. This provision under which five days' period in normal circumstances and fifteen days' period in exceptional circumstances has been provided relates to the supply or communication of the grounds on which the order of detention has been made to the detenu. It has no reference to the documents and material on the basis of which the detention order has been made and it is quite clear that there is no reason why the documents and materials in support of the grounds on the basis of which the detention order has been made, the same being ex hypothesi in existence at the time of the issuance of the detention order and framing of the grounds, should not be supplied to the

> detenu along with the grounds. Non-supply of such material and documents along with the grounds would clearly amount to a violation of the safeguard guaranteed under Art. 22 (5) of the Constitution. Since in the instant case that safeguard afforded to the detenu has been violated, further detention of the detenu would be illegal and void."

On the other hand, learned APP, Mr.N.D.Gohil submitted that it is true that reference is made to five criminal cases in the grounds of detention, however, copy of the same is not supplied to the petitioner. He, however, submitted that number of the aforesaid cases are mentioned in the grounds of detention.

It is not in dispute that the detaining authority has relied upon five criminal cases in connection with past conduct of the detenu, at the time of passing the detention order. Under these circumstances, the authority should have given copy of the aforesaid cases to the petitioner and if it not available with detaining authority, it could have been called from the concerned police station.

Since it is not in dispute that the documents relied upon by the detaining authority in the detention order are not supplied to the petitioner, the petitioner is denied his right to make effective representation against the order of detention and the safeguard guaranteed under Article 22 (5) of the Constitution of India is violated, therefore, the order of detention passed against the petitioner is required to be quashed on this ground only.

Under these circumstances, this petition is allowed. Order of detention dated 18-3-2006 is quashed and set aside. Detenu – Chimanlal Babubhai Jaiswal is ordered to be released forthwith unless his presence is required in connection with any other case. Rule is made absolute with

no order as to costs.

(P.B.MAJMUDAR, J.)

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